UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,179	02/25/2005	Ralf Widera	20811/0204769-US0	4000

7278 7590 03/29/2010

DARBY & DARBY P.C.
P.O. BOX 770
Church Street Station
New York, NY 10008-0770

EXAMINER	
LIN, WEN TAI	
ART UNIT	PAPER NUMBER
2454	

MAIL DATE	DELIVERY MODE
03/29/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/507,179
Filing Date: 2/25/2005
Appellant(s): Ralf Widera et al.

Erik R. Swanson

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/02/2010 appealing from the Office action mailed 9/04/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,847,613	Mimura et al.	1-2005
5,561,825	Yamagami et al.	10-1996

(9) Grounds of Rejection

Claim Rejections - 35 USC § 103

Claims 13-15, 18-23 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mimura et al. [U.S. Pat. No. 6847613].

As to claim 13, Mimura teaches the invention as claimed including: a method for transmitting measured information from a measuring computer [e.g., any of 33 or 34, Fig. 3] to a control computer of a measuring system [e.g., 37, Fig. 3], the measuring computer and the control computer being interconnected via a telecommunications network [Abstract; col. 8, lines 5-21], the method comprising:

transmiting a plurality of measurement packets from a sending measuring computer to the measuring computer over a measurement path so as to provide measured data including a plurality of respective one-way delay measurements of the measurement path [e.g., col. 7, lines 21-29; col. 1, lines 23-32];

combining the measured data into characteristic values having a lower volume than the measured data [e.g., each of the statistics data exemplified at col. 6, line 65 – col. 7, line 21 is a reduction from multiple measured packet data to a single packet containing information illustrated in Figs. 7-11], the characteristic values such as maximum, mean, and minimum usage bandwidth and time stamping the start, end and duration of each communication flow [78-79, Fig. 7; col. 14, lines 45-56];

associating the characteristic values with a time of the combining [e.g., 79, Fig. 7; col.7, lines 21 – 29; note that any time during which the plurality of measured packets are being counted and evaluated for the statistics data described at col. 6, line 65 – col. 7, line 21 is "a time of combining"; thus either the start or end time stamps, which marks the beginning or ending of the characteristic evaluation process, respectively, specifies a point of combining]; and

transmitting the characteristic values from the measuring computer to the control computer [Fig.3; col. 9, lines 9-12 and 51-56].

Mimura is silent about obtaining at least two of a mean one-way delay, a mean one-way path delay, and a maximum one-way delay as aggregation of characteristic values. However, characterizing a communication path with one-way or two-way delays is well known in the art. Furthermore, it is well known that a one-way path delay can be derived by time stamping the start, end and the duration of packets (i.e., per communication flow) routed along the path [e.g., col.1, lines 18-28; col. 14, lines 51-56]. Additionally, it is also well understood that, due to the stochastic nature of network traffic, instantaneous network parameter values fluctuate and

traditionally it characterizes the network parameters better in terms of statistical values by taking the mean, minimum and maximum of a group of measurements.

As such, following Mimura's way of reporting bandwidth usage associated with a communication path (see Figs. 7-8), it is obvious that an ordinary skill in the art is able to report the one-way path delay with the similar mean and minimum-maximum statistical values because the path delay statistics enables one to understand the varying behavior of the networked path over a period of time [see col.7, lines 27-29: "… delay time is calculated as part of the statistics data"].

As to claim 14, Mimura further teaches that the telecommunications network includes at least one of an internet and an intranet [e.g., col. 1, lines 5-16].

As to claim 15, Mimura further teaches that the measured data includes a plurality of measurement parameters, and wherein the combining is performed according to the respective measurement parameters, [e.g., col. 6, line 65 – col. 7, line 29].

As to claim 18, Mimura further teaches that the method further comprises determining a time interval for combining the measured data as a function of a measuring method [e.g., col. 12, lines 3 – 8; i.e., all the measured statistics data are obtained from a time interval marked as "interval" in 79 of Fig.7].

As to claim 19, Mimura further teaches that the measuring system includes a second measuring computer and wherein measurement packets are transmitted between measuring computer and the second measuring computer [e.g., 33-34, Fig. 7; i.e., since packets travels between nodes 33 and 34 of Fig.3: if node 34 is the measuring computer, then node 33 is the second computer; likewise the reverse is true].

As to claim 20, Mimura further teaches that the measurement packets include User Datagram Protocol measurement packets [e.g., col. 12, lines 17-24].

As to claim 21, Mimura further teaches that the characteristic values include a sum of all packets lost and a maximum of all successively occurring packet losses, and further comprising determining the sum of all packets lost and the maximum of all successively occurring packet losses during a detection of measurement packet losses in a time interval [e.g., 77, Fig. 7; col. 14, lines 38-56].

As to claims 22-23, and 29-31, since the features of these claims can also be found in claims 13-15 and 19, they are rejected for the same reasons set forth in the rejection of claims 13-15 and 19 above.

(10) Response to Argument

In the argument section Appellants argue that Mimura fails to teach or suggest at least associating characteristic values with a time of their combining, as recited in independent claims 13 and 29.

In response, Appellants are reminded that since each characteristic values engages a plurality of measurement packets which may arrive at different points of time during an evaluation interval for the characteristic values, the so called "combining the measured data into characteristic values" is broadly interpreted as a progressive process. That is, any time a new measurement packet is received at or processed by the measuring computer (during the evaluation process) is a time of combining. Thus both Mimura's start and end time stamps of Fig. 7 are also associated with the "time of combining" because they essentially mark the beginning and end of Mimura's statistics evaluation process, a process that is initiated by a "command to start monitoring" and terminated when the end of the flow session is detected [e.g., Figs. 5-6; col. 8, lines 40-50; col. 4, lines 51-55].

In the tables listed in Fig. 2, the Appellants appear to use the receive time stamp (RTS) of the last measurement packet as an aggregation time (AGGT) associated with the characteristic values [72a, Fig. 2]. It is unclear whether Appellants designate this AGGT as the "time of combining". However, it is clear that, through this example, Appellants apparently do not require that "the time of combining" be set at a point after the evaluation of characteristic values is completed. This is because AGGT marks a time before the last measurement packet is engaged into the characteristic values. Since nowhere in Appellants' specification defines a precise time of combining, it is believed that Mimura's start and/or end time stamps meet this claimed limitation.

For at least the foregoing reasons, it is submitted that the prior art of record reads on the claims.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Wen-Tai Lin/

Primary Examiner, Art Unit 2454

Conferees:

/NATHAN FLYNN/

Supervisory Patent Examiner, Art Unit 2454

/John Follansbee/

Supervisory Patent Examiner, Art Unit 2451